

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD SEPULVEDA,

Plaintiff,

v.

TAQUERIA Y CARNICERÍA MARTINEZ
LLC, et al.,

Defendants.

Case No. 23-cv-01781-LJC

**ORDER TO SHOW CAUSE RE:
SUPPLEMENTAL JURISDICTION;
VACATING HEARING FOR MOTION
FOR DEFAULT JUDGMENT**

On April 13, 2023, Plaintiff Richard Sepulveda filed his Complaint against Defendants Taqueria y Carnicería Martinez, LLC, Jiron Zhang, and Xin Li Feng alleging claims under the American with Disabilities Act (ADA), California's Health and Safety Code, California's Disabled Persons Act (CDPA), and California's Unruh Civil Rights Act (Unruh Act). ECF No. 1. These claims stem from alleged barriers Mr. Sepulveda encountered (such as lack of accessible parking and an accessible restroom) while he visited Taqueria y Carnicería Martinez, which is owned and operated by Taqueria y Carnicería Martinez, LLC, and leased on real property owned by Jiron Zhang and Xin Li Feng. See id. Defendants have not appeared in this action, and default has been entered. ECF No. 9. On June 30, 2023, Mr. Sepulveda filed a Motion for Default Judgment by the Court as to All Defendants (Motion for Default Judgment). ECF No. 12.

Based upon the recent Ninth Circuit opinion in Vo v. Choi, the Court will order Mr. Sepulveda to show cause why the Court should not decline to exercise supplemental jurisdiction over his state law claims. See 28 U.S.C. § 1367(c); Vo v. Choi, 49 F.4th 1167 (9th Cir. 2022) (holding that the district court properly declined to exercise supplemental jurisdiction over Unruh Act claim). In the Unruh Act, California created a state law cause of action that relies dispositively on the ADA's substantive rules but expands the remedies available in a private

1 action to “actual” and treble damages. See Arroyo v. Rosas, 19 F.4th 1202, 1211 (9th Cir. 2021).
 2 “In response to the resulting substantial volume of claims asserted under the Unruh Act, and the
 3 concern that high-frequency litigants may be using the statute to obtain monetary relief for
 4 themselves without accompanying adjustments to locations to assure accessibility to others,
 5 California chose...to impose filing restrictions designed to address that concern.” Id. at 1211–12.
 6 These heightened pleading requirements apply to actions alleging a “construction-related
 7 accessibility claim,” which California law defines as “any civil claim in a civil action with respect
 8 to a place of public accommodation, including, but not limited to, a claim brought under Section
 9 51, 54, 54.1, or 55, based wholly or in part on an alleged violation of any construction-related
 10 accessibility standard.” Cal. Civ. Code § 55.52(a)(1). The requirements apply not just to claims
 11 brought under the Unruh Act, but also to related disability access claims under the California
 12 Health and Safety Code and the CDPA. See Sepulveda v. Kobaree, No. 23-CV-02368-RS, 2023
 13 WL 5020267, at *2 (N.D. Cal. Aug. 4, 2023); Gilbert v. Singh, No. 121CV01338AWIHBK, 2023
 14 WL 2239335, at *2 (E.D. Cal. Feb. 27, 2023).

15 In addition, California also imposed limitations on “high-frequency litigants,” which is
 16 defined as “[a] plaintiff who has filed 10 or more complaints alleging a construction-related
 17 accessibility violation within the 12-month period immediately preceding the filing of the current
 18 complaint alleging a construction-related accessibility violation.” Cal. Civ. Proc. Code
 19 § 425.55(b)(1). The definition of “high-frequency litigants” also extends to attorneys. See id.
 20 § 425.55(b)(2). “High-frequency litigants” are subject to a special filing fee and further
 21 heightened pleading requirements. Arroyo, 19 F.4th at 1207 (citing Cal. Gov’t Code § 70616.5;
 22 Cal. Civ. Proc. Code § 425.50(a)(4)(A)).

23 By enacting these restrictions on the filing of construction-related accessibility claims, the
 24 California Legislature has expressed a desire to limit the financial burdens California businesses
 25 may face for claims for statutory damages under the Unruh Act, the California Health & Safety
 26 Code, and the CDPA. Id. at 1206–07, 1212; Gilbert, 2023 WL 2239335, at *2. The Ninth Circuit
 27 has also expressed “concerns about comity and fairness” by permitting plaintiffs to file these
 28 actions in federal court to circumvent “California’s procedural requirements.” See Vo, 49 F.4th at

1 1171–72.

2 “[I]n any civil action of which the district courts have original jurisdiction, the district
3 courts shall have supplemental jurisdiction over all other claims that are so related to claims in the
4 action within such original jurisdiction that they form part of the same case or controversy under
5 Article III of the United States Constitution.” 28 U.S.C. § 1367(a). Even if supplemental
6 jurisdiction exists, however, district courts have discretion to decline to exercise supplemental
7 jurisdiction. Id. § 1367(c). Such discretion may be exercised “[d]epending on a host of factors”
8 including “the circumstances of the particular case, the nature of the state law claims, the character
9 of the governing state law, and the relationship between the state and federal claims.” City of
10 Chicago v. Int’l Coll. of Surgeons, 522 U.S. 156, 173 (1997). Since Arroyo and Vo, district courts
11 have frequently declined to exercise supplemental jurisdiction over state law claims brought under
12 the Unruh Act and other California disability access statutes. See, e.g., Sepulveda, 2023 WL
13 5020267, at *2; Gilbert, 2023 WL 2239335, at *2; Johnson v. Constantia Cap. Ltd., No. 22-CV-
14 01456-RS, 2022 WL 3925290, at *2 (N.D. Cal. Aug. 30, 2022); Garcia v. Maciel, No. 21-CV-
15 03743-JCS, 2022 WL 395316, at *3 (N.D. Cal. Feb. 9, 2022).

16 Here, a review of Mr. Sepulveda’s prior cases from this District reveals that he has filed
17 ten or more complaints alleging a construction-related accessibility violation within the twelve-
18 month period immediately preceding the filing of the current complaint. See Norton v. LVNV
19 Funding, LLC, 396 F. Supp. 3d 901, 909 (N.D. Cal. 2019) (noting that “a court can take judicial
20 notice of its own files and records under Rule 201 of the Federal Rules of Evidence.”) (citation
21 omitted).

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 Accordingly, the Court hereby **VACATES** the hearing for the Motion for Default
2 Judgment, currently set for August 22, 2023, at 10:30 A.M., and Mr. Sepulveda is **ORDERED** to
3 show cause, in writing, within fourteen days of service of this Order, why the Court should not
4 decline to exercise supplemental jurisdiction over his state law claims. An inadequate response
5 may result in the undersigned recommending that supplemental jurisdiction over Plaintiff's state
6 law claims be declined and that they be dismissed without prejudice pursuant to 28 U.S.C.
7 § 1367(c).

8 **IT IS SO ORDERED.**

9 Dated: August 17, 2023

10
11
12 
13 LISA J. CISNEROS
14 United States Magistrate Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California